Streets and Highways—Pushing Disabled Motorcycle Not "Operating" or Allowing to "Remain" on Way.—In Norcross *v.* Roberts Co., 132 N. E. 399, the Supreme Judicial Court of Massachusetts held that one who went to another town to get a motorcycle to have it repaired, and, finding the engine frozen, proceeded to push the machine along the highway, when he was struck from the rear, was not "operating" the machine, nor was he permitting it to "remain" on the way, within St. 1919, c. 88, providing that no person shall operate any motor vehicle nor permit the same to be operated on or remain on any way unless registered, and so was not precluded from recovering damages, in absence of willful or reckless conduct in striking him.

The court said in part: "It was held in Dudley *v.* Northampton Street Railway, 202 Mass. 443, 89 N. E. 25, 23 L. R. A. (N. S.) 561, that under our statutes a person operating an automobile which was not registered as required by those statutes, was a mere trespasser upon the public way, and had no greater rights against persons who were lawfully using the way than that they should not recklessly or wantonly injure him or his property. Holder *v.* McGillicuddy, 215 Mass., 563, 564, 102 N. E. 923, where the later cases are collected. The statute then in force (St. 1903, c. 473, § 3) prohibited the "operation" of unregistered automobiles or motorcycles on public highways. The same provision appears in the General Motor Vehicle Law of 1909, c. 534, § 9. At the time of the accident, however, St. 1919, c. 88, was in force. This substituted for said section 9, the following: 'No person shall operate any motor vehicle nor shall the owner or custodian of such a vehicle permit the same to be operated upon, or to remain upon, any way in this commonwealth unless the vehicle is registered in accordance with the provisions of this act,' etc.

"In view of the conflicting testimony, the trial court submitted to the jury the question, 'Was the plaintiff riding and operating his machine at the time of the accident?' And they answered 'No.' Accordingly the provision of the statute dealing with the operation of the motor-vehicle, has no application here, even though that term includes ordinary stops upon the way incidental to the operation of the vehicle. Commonwealth *v.* Henry, 229 Mass. 19, 118 N. E. 224, L. R. A. 1918B, 827. The plaintiff was no more operating the machine, within the contemplation of the statute, than if he had been conveying it in a wheelbarrow. Nor was he permitting the machine to 'remain' upon the way, within the meaning of the statute. It was not stationary; was not left standing on the street. The word 'remain' implies the absence of motion; the motorcycle, although being pushed along by the plaintiff and not propelled by its own power, was in fact moving. Tinkle *v.* Sweeney, 97 Tex. 190, 77 S. W. 690; Harris *v.* Wright, 118 N. C. 422, 426, 24 S. E. 751; State *v.* Goulding, 44 N. H. 284, 286. Without undertaking to define the words 'to remain upon any way,' as used in the statute, it is enough to say that plainly the present

case does not come within their scope. It is suggestive that the section in which they appear has the caption 'Operation of Motor Vehicles,' St. 1909, c. 534, § 9. We are of opinion that the plaintiff's action, in pushing his disabled motorcycle along the street, did not bring him within the language or the purpose of the statute."

Vendor and Purchaser—Right of Purchaser to Damages for Loss of Bargain.—In Crenshaw *v.* Williams, 231 S. W. 45, the Court of Appeals of Kentucky held that where vendor in making contract to convey land acts in good faith, and is guilty of no positive or actual fraud in the transaction, but is unable to perform because of inability to convey a good title to the land, the purchaser cannot recover as damages the difference between the market value of the land and the contract price; that is, damages for the loss of his bargain.

The court said in part:

"In no case has this court permitted the recovery in such cases of any increase in the market value of the land above that which was agreed to be and was actually paid. New Domain Oil & Gas Co. *v.* McKinney, 188 Ky. 183, 221 S. W. 245 (and cases therein referred to); Helton *v.* Asher, 135 Ky. 751, 123 S. W. 285; Sullivan *v.* Hill, 112 S. W. 564, 33 Ky. Law Rep. 962, and Robertson *v.* Lemon, 2 Bush, 301. If no other value may be taken into consideration in estimating the damages to the covenantee in a suit by him upon the breach of a warranty actually made than that agreed upon by the parties as a consideration for the conveyance of the land, it is difficult to perceive the reason for the application of a different rule where the obligation sued on, instead of being an executed warranty, is only an agreement to execute one. It is the absence of any semblance of logical distinction between the two cases that influenced the English courts in an early day, and the courts of most of the states of the Union, including this one, to adopt the rule first above stated, i. e., denying substantial damages because of increased market value of the land in a suit for the breach of a contract to convey it where the vendee was guiltless of active fraud and acted in good faith. The earliest English case coming under our observation so holding is Flureau *v.* Thornhill, 2 W. Bl. 1078. That case has since been followed by those of Pounsett *v.* Fuller, 17 C. B. 660; Walker *v.* Moore, 10 Barn. & C. 416; Sikes *v.* Wild, 1 Best & S. 587; s. c., 4 Best & S. 421; Bain *v.* Fothergill, L. R. 6 Exch. 59; s. c., L. R. 7 H. L. 158; Engell *v.* Fitch, L. R. 4 Q. B. 659, 10 B. & S. 738, and Jones *v.* Gardner, 1 Ch. 191, 71 L. J. Ch. 93, 86 L. T. Rep. N. S. 74. In support of the above rule and for a list of cases, both English and American, supporting it, we refer to the note to case of Beck *v.* Staats, 16 L. R. A. (N. S.) on page 771; 39 Cyc. pp. 2105-2111, inclusive, and 27 R. C. L. 633-634. In the last work cited, in stating the general rule, the text says: